

**DECLARATION**

I, Patricia A. Turner, hereby declare under penalty of perjury under the laws of the United States of America that the facts recited below are true and correct:

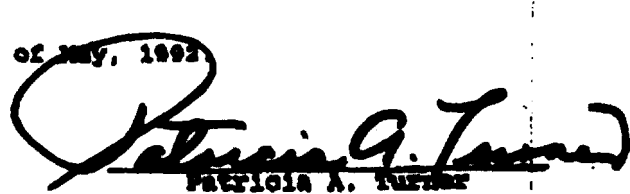
1. I am President of TCOM, Inc. (hereafter TCOM) an applicant for authority to construct and operate a new FM broadcast station on Channel 292C3 (106.3 MHz) at La Crosse, Wisconsin (File No. BFM-910127MA). TCOM has entered into a Merger Agreement with Mississippi Valley Broadcasters, Inc. (hereafter Mississippi Valley) looking toward the dismissal of TCOM's application. The Merger Agreement correctly reflects the agreement reached.

2. Neither Mississippi Valley nor any agent of Mississippi Valley has promised or paid any consideration to TCOM or its principals except for that described in the Merger Agreement.

3. TCOM's application was not filed for the purpose of reaching or implementing such a Merger Agreement.

4. The proposed settlement is in the public interest because it will conserve Commission resources, and pave the way for the earlier institution of new FM service to La Crosse, Wisconsin.

Executed this 4 day of May, 1992

  
Patricia A. Turner

## **APPENDIX C**

### DECLARATION

I, Howard G. Bill, hereby declare under penalty of perjury under the laws of the United States of America that the facts recited below are true and correct:

1. I am President of Mississippi Valley Broadcasters, Inc. (hereafter Mississippi Valley) an applicant for authority to construct and operate a new FM broadcast station on Channel 292C3 (106.3 MHz) at La Crosse, Wisconsin (File No. BPH-910118MA).

2. Mississippi Valley has entered into a Merger Agreement with Broadcast Properties of La Crosse, Inc. (hereafter Broadcast Properties) and TCOM, Inc. (hereafter TCOM) looking toward a merger of interests, the dismissal of the applications of Broadcast Properties and TCOM and the grant of the application of Mississippi Valley.

3. The purpose of this Declaration is to set forth a full explanation and justification of the consideration exchanged in the Merger Agreement. I am the sole own of Mississippi Valley. Under the Merger Agreement, I will assign a 1/3 interest in Mississippi Valley to TCOM and a 1/3 interest in Mississippi Valley to Broadcast Properties, so that TCOM, Broadcast Properties and I will each have an equal interest in the corporation. I will also cause the By-Laws of the corporation to be amended to provide for a Board of Directors comprised of three members, one member to be appointed by TCOM, one member to be appointed by Broadcast Properties and one member to be appointed by me. As sole present director of Mississippi Valley, I will also elect Patricia A. Turner (a TCOM principal) as Chairman of the Board of Directors and Vice President

of Mississippi Valley and Philip Kelly (a Broadcast Properties principal) as Secretary and Treasurer of Mississippi Valley. In sum, under the Merger Agreement, TCOM, Broadcast Properties and I will have equal ownership interests and, through the Board of Directors, equal management authority.

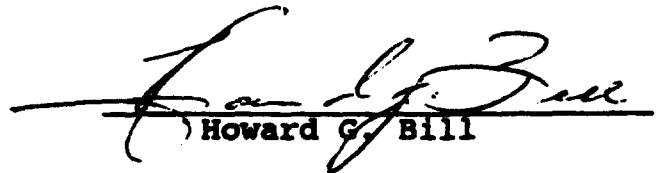
4. Under the Merger Agreement, TCOM, Broadcast Properties and I each agree to share equally in the costs associated with the construction and initial (three months) operation of the Channel 292C3 station. This will be accomplished by debt financing, equity financing or a combination of both. If required by a lending institution, TCOM and its principals, Broadcast Properties and its principals and I shall jointly and severally guarantee repayment of the loan.

5. Under the Merger Agreement, TCOM and Broadcast Properties will not receive any monetary consideration for the dismissal of their respective applications. In the event, however, that any of the parties (including me) is unable to meet a capital call for equity financing in the amounts described in the Merger Agreement, Mississippi Valley will have the option to acquire the shares of the non-contributing shareholder in consideration for (a) its capital costs previously made and (b) an amount equal to the application expenses of the non-contributing member but not to exceed \$10,000. In addition, after the station commences program tests, the three owners will have the right to put their shares to Mississippi Valley during a 180 day period for an amount equal to (a) their application expenses but not to exceed \$10,000, (b) their

capital contributions previously made, and (c) an amount equal to the fair market value of their respective interests but not to exceed \$25,000. In substance then, if a shareholder decided not to provide equity capital to the corporation, he could recoup his investment in his application (with a \$10,000 cap) and his investment in Mississippi Valley. In addition, after the station goes on the air, any shareholder could for a brief period if he so chose to recoup his investment in his application (with a \$10,000 cap) and in Mississippi Valley and be paid fair market value for his interest in Mississippi Valley with a cap of \$25,000.

6. In sum, it is the intention of the parties to enter into a bona fide merger and to share equally in the risk and rewards of the business venture. Under the Merger Agreement, no party is guaranteed any payment regardless of the outcome of the business venture.

Executed this 4<sup>th</sup> day of May, 1992.

  
Howard G. Bill

## **APPENDIX D**

## U.S. Radio Markets

### Fayetteville, NC: Rank 120

MSA: 308,800; TSA: 768,400

Stations: WAGR, WCIE, WFAI, WFLB, WFMO, WFNC, WGOR-FM, WDU, WJSK-FM, WKKE, WKML-FM, WMXF-FM, WOSM-FM, WRCC-FM, WSTS-FM, WTSS, WXKL, WYRU, WZFX-FM.

### Fayetteville-Springdale, AR: Rank 186

MSA: 180,400; TSA: 282,100

Stations: KAMO, KAMO-FM, KBRS, KCIZ-FM, KESE-FM, KEZA-FM, KFAY, KJEM, KKEG-FM, KKIP, KKIX-FM, KMCK-FM, KOFC, KOLZ-FM, KOXK, KUOA, KURM.

### Flint, MI: Rank 105

MSA: 346,700; TSA: 510,200

Stations: WACY, WCRZ-FM, WQZZ-FM, WDFD, WFLT, WGMZ-FM, WKMF, WOVE-FM, WTAC, WWCK, WWCK-FM, WWGZ, WWGZ-FM.

### Florence, SC: Rank 101

MSA: 144,700; TSA: 206,500

Stations: WDAR, WDAR-FM, WHLZ-FM, WHSC, WJMX, WJMX-FM, WMYT-FM, WOLS, WTN, WYLC, WYFN-FM, WYNN, WYNN-FM.

### Fort Myers, FL: Rank 121

MSA: 308,700; TSA: 600,700

Stations: WAKS-FM, WAVV-FM, WCKT-FM, WCRM, WCVU-FM, WDCQ, WHEW-FM, WINK, WINK-FM, WKZY-FM, WMYR, WOLZ-FM, WRXK-FM, WSUV-FM, WWCL, WWCN, WZCR-FM.

### Fort Pierce-Stuart-Vero Beach, FL: Rank 119

MSA: 309,800; TSA: 335,200

Stations: WAVV-FM, WAXE, WGYL-FM, WHLG-FM, WIRA, WJNX, WPSL, WQOL-FM, WSTU, WTTB, WZZR-FM.

### Fort Smith, AR: Rank 184

MSA: 182,300; TSA: 412,300

Stations: KAYR, KBBQ-FM, KEZU-FM, KFDF, KFPW, KFSA, KISR-FM, KKID, KKID-FM, KLMK-FM, KLSZ-FM, KMAG-FM, KOLX-FM, KPBI, KPRV, KPRV-FM, KTCS, KTCS-FM, KWHN, KZBB-FM, KZKZ-FM.

### Fort Walton Beach, FL: Rank 210

MSA: 123,000; TSA: 147,200

Stations: WAAZ-FM, WCNJ, WFSH, WFTW, WGTJ, WJSS, WKSA-FM, WMMK-FM, WNUE, WOUN-FM, WWAV-FM, WWSF, WWSF-FM, WYBZ-FM.

### Fort Wayne, IN: Rank 123

MSA: 297,500; TSA: 834,900

Stations: WAJH-FM, WBTU-FM, WBVR-FM, WDJH-FM, WFCV, WGL, WIFF, WIFF-FM, WJFX-FM, WJLT-FM, WLYV, WMEE-FM, WOWO, WOWO-FM, WOHK, WOTZ-FM, WYKE-FM.

### Frederick, MD: Rank 283

MSA: 127,500; TSA: 127,500

Note: part of Washington, D.C., Metro

### Fresno, CA: Rank 69

MSA: 543,800; TSA: 1,106,200

Stations: KBFB, KBOS-FM, KEYO, KEZL-FM, KFIG, KFIG-FM, KFRE, KFSD-FM, KGST, KHOT, KIGS, KIRV, KJFX-FM, KJOI-FM, KKAM, KKDJ-FM, KKPO, KMAK-FM, KMJ, KMMA-FM, KNAX-FM, KNBS-FM, KOOO, KOPW-FM, KROU, KROU, KRZR-FM, KSEO-FM, KSKS-FM, KTAA-FM, KTHT-FM, KXEX, KXMX-FM, KYNO.

### Gainesville, FL: Rank 182

MSA: 157,800; TSA: 485,300

Stations: WAJD, WEAG, WEAG-FM, WPEZ-FM, WGGG, WTKT-FM, WLCL-FM, WLUS, WMMZ-FM, WRUF, WRUF-FM, WTRS-FM, WYGC-FM, WYKS-FM, WYOC-FM.

### Grand Forks, ND-MN: Rank 243

MSA: 83,600; TSA: 186,800

Stations: KCNN, KJJK-FM, KKCO, KKCO-FM, KKXL, KKXL-FM, KNOX, KNOX-FM, KOHT-FM, KROX, KSNR-FM, KYCK-FM, KZLT-FM.

### Grand Junction, CO: Rank 248

MSA: 77,400; TSA: 171,200

Stations: KEKB-FM, KEXO, KJYE-FM, KKLY-FM, KNZZ, KOKL, KOIX-FM, KSTR, KSTR-FM.

### Grand Rapids, MI: Rank 68

MSA: 560,800; TSA: 1,332,700

Stations: WCUI, WCUI-FM, WFUR, WFUR-FM, WGHM, WGHM-FM, WGRD, WGRD-FM, WHTC, WJFM-FM, WJPW, WJOK-FM, WKLO-FM, WKWM, WLAV, WLAV-FM, WLHT-FM, WMAX, WOOD-FM, WOOD-FM, WWJO, WYGR, WYXX-FM.

### Great Falls, MT: Rank 256

MSA: 62,100; TSA: 123,300

Stations: KAAK-FM, KEIN, KLFM-FM, KMON, KMON-FM, KODI, KODI-FM, KXGF.

### Green Bay, WI: Rank 179

MSA: 161,000; TSA: 680,400

Stations: WDBZ, WGEE, WHET-FM, WIXX-FM, WJLW-FM, WNFL, WOLU-FM.

### Greensboro-Winston Salem-High Point, NC:

Rank 48

MSA: 809,600; TSA: 1,903,800

Stations: WAAA, WBFJ, WDX, WDSL, WGLD, WGOS, WHPE-FM, WJMH-FM, WKEL, WKRR-FM, WKSI-FM, WKTE, WKXR, WKZL-FM, WLXN, WMAG-FM, WMFR, WMQX, WMQX-FM, WPCM-FM, WPET, WQMG, WQMG-FM, WSGH, WSJS, WSMX, WTHP-FM, WTNC, WTOS, WTQR-FM, WWGL-FM, WWMY-FM, WWWB-FM, WZOO.

### Greenville-New Bern-Jacksonville, NC: Rank 81

MSA: 443,300; TSA: 824,300

Stations: WBTB, WBOZ, WCPO, WCZI-FM, WOLX-FM, WELS, WGBB, WHITE-FM, WKLS-FM, WISP, WJCV, WJNC, WKXK-FM, WKJA-FM, WKOO-FM, WKQT-FM, WKZF-FM, WLAS, WLOJ, WMBL, WMSQ-FM, WNCT, WNCT-FM, WNOB, WOOW, WOOW-FM, WRHT-FM, WRNS, WRNS-FM, WROR-FM, WRPF, WSFL, WSFL-FM, WTOW, WVVY-FM, WVOF, WZQR-FM.

### Greenville-Spartanburg, SC: Rank 88

MSA: 670,800; TSA: 1,488,800

Stations: WAGL-FM, WAM, WANS, WASC, WBBO-FM, WBBR, WCCP, WCKI, WELP, WESC, WESC-FM, WFBC, WFBC-FM, WFS, WHPB, WHYZ, WJXI, WKDY, WLWZ-FM, WMLU, WMLU-FM, WMYI-FM, WORO, WPCI, WPJM, WRX, WRX-FM, WROQ-FM, WSPA, WSPA-FM, WSSL, WSSL-FM, WTB, WMMB-FM.

### Hagerstown-Chambersburg-Waynesboro, MD-PA:

Rank 155

MSA: 206,000; TSA: 347,000

Stations: WARK, WARK-FM, WAYZ, WAYZ-FM, WCBG, WCHA, WEEQ, WGLL-FM, WHAG, WKZ-FM, WJEL, WKSL-FM, WPGV, WQCM-FM, WWMO-FM, WYH-FM.

### Harrisburg-Lebanon-Carlisle, PA: Rank 78

MSA: 500,200; TSA: 1,488,800

Stations: WAOV, WAHT, WCMR, WCTX-FM, WHP, WHP-FM, WHYL, WHYL-FM, WIMX-FM, WIOO, WKBO, WLBR, WNNK, WNNK-FM, WQON, WRKZ-FM, WSHF, WTPA-FM, WUFM-FM, WYH, WWKL-FM, WYGL-FM.

### Harttsburg, VA: Rank 251

MSA: 78,800; TSA: 233,200

Stations: WAZR-FM, WBOF-FM, WBTX, WHBG, WKCY, WKCY-FM, WLTX-FM, WPKZ-FM, WPOF-FM, WRDJ-FM, WSYA.

### Hartford-New Britain-Middletown, CT: Rank 41

MSA: 990,500; TSA: 2,588,800

Stations: WBIS, WCCC, WCCC-FM, WCNX, WCTF, WDRG, WDRG-FM, WHCM-FM, WIOF-FM, WKND, WKSS-FM, WLVH, WLVH-FM, WMMW, WNEZ, WNTY, WPOP, WRCH-FM, WRYM, WTIC, WTIC-FM, WZMX-FM.

### Honolulu, HI: Rank 88

MSA: 704,500; TSA: 704,500

Stations: KAIM, KAIM-FM, KCCN, KCCN-FM, KDEO, KDEO-FM, KGU, KHFX-FM, KHNN-FM, KHVH, KKI, KKKI-FM, KISA, KLEI, KLHT, KNOI, KOHO, KPOL-FM, KOMO, KOMO-FM, KRTR-FM, KSSK, KSSK-FM, KULA, KUMU, KUMU-FM, KWAJ, KZOO.

### Houston-Galveston: Rank 18

MSA: 3,015,300; TSA: 3,772,400

Stations: KBRZ, KBRZ-FM, KCOH, KEYH, KGB, KGOL, KHCB-FM, KHMX-FM, KHYS-FM, KIKK, KIKK-FM, KIKR, KILT, KILT-FM, KJOJ-FM, KJZB-FM, KKBQ, KKBQ-FM, KLAT, KLDE-FM, KLEV, KLFL-FM, KLTR-FM, KLVL, KMIA-FM, KMJO-FM, KMPO, KNUZ, KODA-FM, KPRC, KPXE, KOOK-FM, KOUF-FM, KRBE, KRBE-FM, KRYS-FM, KRYS-FM, KSEV, KSHN-FM, KSSQ, KTEK, KTRH, KWWJ, KXYZ, KYOK, KYST, KZFX-FM.

### Huntington-Ashland, WV-KY: Rank 134

MSA: 260,500; TSA: 614,800

Stations: WAEZ-FM, WCM, WCM-FM, WEMM-FM, WGOH, WIRO, WKEE, WKEE-FM, WLGC-FM, WMLV-FM, WNST, WOKT, WRVC-FM, WTCR, WTCR-FM, WTCV, WTKZ, WUGO-FM, WVKY, WVKY-FM.

### Huntsville, AL: Rank 109

MSA: 335,800; TSA: 790,000

Stations: WAAJ, WAHR-FM, WAJF, WAVD, WBHP, WBXR, WDRM-FM, WEUP, WHOS, WHRT, WHVY-FM, WJRA, WKAC, WKGL, WKMW, WNOA-FM, WOLT-FM, WRSA-FM, WTKA, WYNN, WZYP-FM.

### Indianapolis: Rank 37

MSA: 1,035,500; TSA: 2,184,100

Stations: WBRI, WBSB-FM, WENS-FM, WFBO-FM, WFMS-FM, WFX, WFX-FM, WISC, WIRE-FM, WKLR-FM, WNCB, WNOE, WNTS, WOOO, WPZZ-FM, WSYW, WSYW-FM, WTLC-FM, WTPF-FM, WTTT-FM, WTUX, WXIR-FM, WXLW, WXXP-FM, WYIC, WZPL-FM.

### Ithaca, NY: Rank 246

MSA: 82,200; TSA: 138,300

Stations: WHCU, WKRT, WNYF-FM, WPIE, WQNY-FM, WTKO, WYBR-FM, WYXL-FM.

### Jackson, MS: Rank 116

MSA: 323,200; TSA: 841,800

Stations: WHJT-FM, WNN-FM, WJDS, WJDX-FM, WJMI-FM, WJNT, WJXN, WJXN-FM, WKXI, WKXI-FM, WLN-FM, WLMR, WMOG, WMSI-FM, WOAD, WONT-FM, WOKJ, WONG, WRJH-FM, WRKN, WSLI, WSTZ-FM, WTWZ, WTYX-FM, WZRX.

### Jacksonville, FL: Rank 80

MSA: 781,800; TSA: 1,053,800

Stations: WJIA-FM, WAOC, WAPE-FM, WAYR, WQGL, WCRJ-FM, WEJZ-FM, WFOY, WFOY-FM, WJLX-FM, WHWY, WIVY-FM, WJAX, WJGC, WJXR-FM, WKOL-FM, WOKV, WOKV-FM, WPDQ, WQAI, WQBR, WQIK, WQIK-FM, WROS, WRXJ, WSOB-FM, WSVF, WUVU-FM, WVOJ, WXTL, WZAZ, WZAZ-FM.

### Johnson City-Kingsport-Bristol, TN-VA: Rank 94

MSA: 374,000; TSA: 759,400

Stations: WABN-FM, WBB, WBCV, WBEJ, WDF, WEMS, WETS, WYEF-FM, WFHG, WFKB, WGAT, WKO-FM, WJCM, WJCV, WJOT-FM, WJTB, WKIN, WKOS-FM, WKPT, WKPT, WMCH, WMEV, WMEV-FM, WOPF, WOUT-FM, WRGS, WTFM-FM, WUSJ-FM, WXBQ-FM, WKIS-FM, WZAP.

### Johnstown, PA: Rank 158

MSA: 201,100; TSA: 381,800

Stations: WADJ, WAMO, WBEM, WBRX-FM, WBXQ-FM, WCRO, WGLU-FM, WYQ-FM, WJAC, WKOS-FM, WKXU-FM, WKYE-FM, WNCB, WNTJ, WRD, WVSC, WVSC-FM, WYSN-FM, WZGO.

### Joplin, MO: Rank 229

MSA: 112,300; TSA: 323,300

Stations: KBTN, KDMO, KFSS, KIXQ-FM, KKLL, KKLL-FM, KKOW, KKOW-FM, KKUZ-FM, KMOQ-FM, KMXL-FM, KOCF-FM, KOYX, KSYN-FM, KWS, WMBH.

### Kalamazoo, MI: Rank 162

MSA: 187,000; TSA: 440,800

Stations: WHEZ, WKFR-FM, WKMI, WKPR, WKZO, WNNN-FM, WOLR-FM, WQSN, WQXC, WQXC-FM, WRKR-FM, WUBU-FM.

### Kansas City, MO-KS: Rank 27

MSA: 1,307,800; TSA: 2,156,200

Stations: KAOL, KAYX-FM, KBEA, KBEO-FM, KBZR, KCCV, KCFM-FM, KCFX-FM, KCMO, KCMO-FM, KCNW, KCXL, KEXS, KFKE-FM, KIDZ, KJLA, KKLO, KLEX, KLSI-FM, KMBR-FM, KMBZ, KNNH, KPRS-FM, KPRT, KRVK-FM, KUDL-FM, KXTR-FM, KXXR-FM, KYYS-FM, WDAF, WHB.

### Killeen-Temple, TX: Rank 182

MSA: 207,800; TSA: 311,400

Stations: KIIZ, KIZ-FM, KLFX-FM, KOOC-FM, KOOV-FM, KPLE-FM, KRYL-FM, KTEM, KTON.

### Knoxville, TN: Rank 79

MSA: 518,200; TSA: 1,288,100

Stations: WATO, WCGM, WDLY-FM, WDMF, WEMG, WEZK-FM, WGAP, WGAP-FM, WHJM, WIMZ-FM, WITA, WIVK, WIVK-FM, WJZ-FM, WJFC, WJGN, WKFN-FM, WKXV, WJL, WLIL-FM, WLO-FM, WMOR, WMYU-FM, WNOX-FM, WOKI-FM, WORI, WOSB, WRJZ, WSEV, WTNH, WUTK, WZZZ-FM, WXST-FM, WYFC-FM, WYSH.

### La Crosse, WI: Rank 247

MSA: 81,700; TSA: 290,900

Stations: KAGE, KAGE-FM, KOEG-FM, WIZM, WIZM-FM, WKBB, WKBB-FM, WKTY, WLFN, WLXR-FM, WQJY-FM, WSPL-FM.

### Lafayette, IN: Rank 221

MSA: 112,200; TSA: 291,500

Stations: WASK, WASK-FM, WAZY-FM, WCFY, WEZV-FM, WKHY-FM.

### Lafayette, LA: Rank 178

MSA: 163,900; TSA: 427,000

Stations: KACY, KAJN-FM, KODEA-FM, KFXZ-FM, KJCB, KMDL-FM, KPFL, KROF, KROF-FM, KSMB-FM, KTDY-FM, KVOL, KVOL-FM.

**CERTIFICATE OF SERVICE**

I, Virginia L. Davidson, a secretary in the law offices of Gardner, Carton & Douglas, do hereby certify that true copies of the foregoing "JOINT REQUEST FOR APPROVAL OF AGREEMENT" were sent May 5, 1992, by first-class United States mail, postage prepaid, or as indicated by hand to the following:

Honorable Joseph P. Gonzalez  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 221  
Washington, D.C. 20554  
(By Hand)

Larry Miller, Esquire  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554  
(By Hand)

Chief, Data Management Staff  
Audio Services Division  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 350  
Washington, D.C. 20554  
(By Hand)

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Post Office Box 2809  
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Virginia L. Davidson



FEDERAL COMMUNICATIONS COMMISSION

Record Image Processing System

PRINT JOB REQUESTED

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Attorney/Author Name: GAY, W. JAN  
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## FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554  
APR 16 8 55 AM '92

DISPATCHED BY Docket No. 92-69 ✓

## In re Applications of

MISSISSIPPI VALLEY BROADCASTERS, INC.  
(hereafter "Broadcasters") File No. BPH-910118MA

TCOM, INC.  
(hereafter "TCOM") File No. BPH-910122MA

BROADCAST PROPERTIES OF LA CROSSE, INC.  
(hereafter "La Crosse") File No. BPH-910122MJ

For Construction Permit  
for a New FM Station  
on Channel 292C3 in  
La Crosse, Wisconsin

## HEARING DESIGNATION ORDER

Adopted: April 1, 1992;

Released: April 15, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.<sup>1</sup>

2. *Environmental.* Our engineering study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with Specific Guidelines for Human Exposure to Radiofrequency Radiation" reveals that neither Broadcasters nor TCOM addressed the matter of how they would protect workers on their respective towers from RF radiation exposure. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Broadcasters and TCOM may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). See also *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 28, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure to workers exceed-

ing specific standards. Since Broadcasters and TCOM failed to indicate how workers engaged in maintenance and repair on the tower would be protected from exposure to levels exceeding the ANSI guidelines, the applicants will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally OST Bulletin No. 65, *supra*, at 28. Accordingly, Broadcasters and TCOM will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the presiding judge shall thereafter not consider the environmental effects of the respective proposals. See 47 C.F.R. § 1.1308(d).

3. *FAA.* Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by TCOM would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

4. *Divestiture.* La Crosse is the licensee of WLXR(FM), La Crosse, Wisconsin. La Crosse has stated that it will divest WLXR (FM) in the event of grant of the referenced application. Accordingly, in the event of grant of its application, La Crosse will be required to divest WLXR(FM) prior to the commencement of program test authority.

5. *Late-Filed Amendment.* Broadcasters petitioned for leave to amend its application on April 5, 1991 and February 25, 1992. The accompanying amendments were filed after April 4, 1991, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

6. *Comparative Coverage.* Data submitted by the applicants indicate there would be a significant difference in the size of the populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

<sup>1</sup> A competing application (File No. BPH-910122MB), filed by John H. White, was dismissed for failure to pay a required fee.

An appeal of the dismissal has been filed with, and is currently pending before, the Commission's Office of Managing Director.

8. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Broadcasters or TCOM in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301- 1319.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by TCOM would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That in accordance with paragraph 2 hereinabove, Broadcasters and TCOM shall submit the environmental assessments required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. IT IS FURTHER ORDERED, That in the event of grant of La Crosse's application, La Crosse will be ordered to divest Station WLXR(FM) prior to the commencement of program test authority.

12. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Broadcasters ARE GRANTED and the corresponding April 5, 1991 and February 25, 1992 amendments ARE ACCEPTED to the extent indicated in paragraph 6 above.

13. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file

with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau